IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 25TH JULY 2007 / 3RD SRAVANA 1929

WP(C).No. 12470 of 2005(H)

PETITIONER:

1. RATHI.K.B., W/O.M.PRABHAKARAN NAMBIAR,
KARICHERY VELLAKODE HOUSE, MYLATTY P.O.,
UDUMA VIA, KASARGOD DISTRICT.

2. SOFIAMMA M.V.,
W/O.T.P.SURENDRAN NAIR,
GOVERNMENT COLLEGE QUARTERS, VIDYANAGAR P.O.,
KASARGOD DIST.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY THE SECRETARY,
KERALA PUBLIC SERVICE COMMISSION,
PATTOM, THIRUVANANTHAPURAM.

3. THE DEPUTY DIRECTOR OF EDUCATION,
KASARGOD.

4. THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION,
KASARGOD.

BY GOVERNMENT PLEADER SRI.T.T.MUHAMOOD
ADV.SRI.P.C.SASIDHARAN, SC, KPSC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/07/2007, ALONG WITH WPC NO. 37497 OF 2004 , THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the order dated 24.12.2004 in W.P.(C) No.37497/04 together with postal receipt.

Ext.P2: True copy of the acknowledgment card.

Ext.P3: True copy of the judgment dated 2.7.1986 in W.A.No.595/1981.

// True copy //

P.A. to Judge

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A.K.BASHEER, J.

W.P.(C)No.12470/2005 & 37497/2004

Dated this the 25th day of July, 2007

JUDGMENT

Petitioners in these two writ petitions were included in the list of selected candidates for appointment to the post of HSA (Physical Science) in Kasaragod district. Admittedly, the list expired on December 30, 2004. It is the case of the petitioners that the department had failed to report several vacancies which had arisen during the period of validity of the list. More than two or three counter affidavits and reply affidavits have been filed in these writ petitions. Ultimately, it boils down the question as to whether the assertions made by the petitioners are correct or the stand taken by the department is tenable. Undoubtedly, the issues raised by the parties are in the realm of facts and facts alone. Necessarily, such issues have to be thrashed out on the basis of the records available in the office of the department concerned.

2. There is yet another aspect of the matter. It is the specific case of the petitioners that this court had issued an

interim order on December 24, 2004 directing the department to report 26 vacancies to the Commission. It is asserted by the petitioners that the above order was received by the office of the Deputy Director of Education on December 28, 2004 as is revealed from Ext.P2 in writ petition No.37397/04. However, the Deputy Director had not complied with the above direction. Resultantly, 26 vacancies as directed by this court could not be reported before the expiry of the list, viz. December 24, 2004. In fact, the Deputy Director reported 24 vacancies only on January 1, 2005. It is true that the department has consistently taken the stand that vacancies were not available to be reported. But learned counsel for the petitioners invites my attention to a judgment rendered by the Division Bench of this court in Writ Appeal No.595/1981 and submits that if in fact vacancies were available before the expiry of the list such vacancies ought to have been reported. The failure on the part of the department to report those vacancies should not be at the peril of the petitioners. Yet again, it has to be verified from the records as to whether vacancies were available at the time when the above

direction was issued by this court. This again is a disputed question of fact.

3. Having regard to the peculiar facts and circumstances of the case, writ petitions are disposed of with a direction to respondent no.1 to call for the records, scrutinize the same and pass appropriate orders in the matter in the light of the observations made above. This shall be done within four months from the date of receipt of a copy of this judgment. Petitioners or their authorised representative shall be afforded sufficient opportunity to be heard before any decision is taken in the matter. Petitioners shall produce copies of the two writ petitions, counter affidavits, reply affidavits etc. along with a certified copy of the judgment before respondent no.1 for compliance.

Writ petitions are disposed of as above.

A.K.BASHEER, JUDGE

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